1944. **File No.** O. Medical Pract./44
Legal Department—
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Subject:— Opinions under the Medical Practitioner's Act, 1938

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File No. O. Medical Pract./44

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C O N T E N T S.

Legal Department File No. O.Medical Pract. /44.

Sr.No.	R.I./O.No.	Subject	Pages
		Opinions under the Medical Practitioners Act. 1938.	
1.	6603 22-9-44	Secs 9.34. Removal of a name from the Register for giving false certificate. Application for rest restoration of a name to the Bombay Medical Register. Prosecution of -	1-2

S.AK.

11-7
5 copies

13/7

Office of the R.L.A.

It appears that Dr. M D'Silva, being an L.M.& S. holds a qualification registrable under section 7 of the Bombay Medical Act, 1912. His name was removed from the Medical Regist-ter under section 9for giving a false certificate on a complai-int lodged by the Director of Post and Telegraph after due enq enquiry by the council on 1-9-1924. He had applied for restoration of his name on 30-6-1925-26 and 1940-1941. In 1940 the council adjourned the discussion on the ground that a case for selling illicit liquor was subjudice. In 1941 the council resolved not to grant his application for restoration of his name to the Bombay Medical Register. It appears that his is practising at Ripon Road, Byculla. The question for the consideration of the R.L.A. is whether Dr. D'Silva can be prosecuted under section 34 of the Bombay Medical Practitioners' Act, 1938.

2. Section 34 of the Bombay Medical Practitioners' Act, 1938 prescribes the penalty for the breach of section 32. That section provides that no person other than (i) a practitioner registered under Part II of this Act or (ii) a medical practitioner registered under the Bombay Medical Act, 1912 or (iii) etc. shall practise or hold himself out whether directly or by implication as p-racticing for personal gain any system of medicine, surgery or midwifery. Clause (c) of section 36 ~~of section 36~~ lays down that nothing in sections 32 and 34 shall apply to any person who is entitled to registration under section 16(1) of this Act or section 7 of t Bombay Medical Act, 1912. Apparently there is some distinction between the expressions "registered" in section 34 and "entitled to registration" in clause (c) of section 36 and it is difficult to reconcile these provisions. That question does not, however, appear to be material for purposes of this case since Dr. D'Silva is not registered unde the Bombay Medical Act, 1912. What is therefore necessary to con-sider is whether Dr. D'Silva is entitled to be registered within --

the meaning of clause (e) of section 36 of the Bombay Medical Practitioners' Act, that is to say, entitled to registration under section 7 of the Bombay Medical Act, 1912. No doubt Dr. D'Silva is possessed of the necessary qualifications for registration under sub-section (2) of section 7 and would exfacie have been deemed to be entitled to registration; but sub-section (4) is a general provision which qualifies sub-section (1) to (3) Reading sub-sections (2) and (3) together it appears that although Dr. D'Silva may be possessing the necessary qualifications, he cannot claim registration by reason of the medical council's finding that he has been guilty of unprofessional conduct. Consequently as long as the Medical Council does not direct that his name should be re-entered under section 9 of the Bombay Medical Act, Dr. D'Silva cannot be considered to be entitled to registration within the meaning of clause (e) of section 36 of the Bombay Medical Practitioners Act and would be liable to be prosecuted under section 34 if he is found to be practising. It is possible that a court will take the view that "entitled" refers only to academic qualifications and the like and does not include removal from the register for misconduct but that view hardly appears sound.

Sd/-P.N.Moos
1939-44

Remembrancer of Legal Affairs.

U.R. to G.D.,No. 6603, dated the 22nd September 1944.

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